

HELENA SILVER MINES, INC.

IBLA 77-137

Decided May 31, 1977

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease W-47554.

Affirmed.

1. Oil and Gas Leases: Reinstatement

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only when the lessee shows that his failure to pay the rental on or prior to the anniversary date was either justifiable or not due to a lack of reasonable diligence. Mailing the rental payment after it is due does not satisfy the reasonable diligence requirement, nor does the absence of lessee's president from the company office serve to justify the lack of reasonable diligence.

APPEARANCES: Peter W. Laczay, President, Helena Silver Mines, Inc., Coeur d'Alene, Idaho.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Helena Silver Mines, Inc., has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated January 4, 1976, denying its petition for reinstatement of oil and gas lease W-47554. The lease was terminated by operation of law, pursuant to 30 U.S.C. § 188(b) (1970), for failure to pay the annual rental on or before December 1, 1976, the anniversary date of the lease. The check for the rental was dated December 1, 1976. The envelope containing the check was postmarked December 3, 1976, from Spokane, Washington, and it was received in the Wyoming State Office, BLM, on December 7, 1976.

Appellant's president asserts that in November 1976 he was pursuing mine development work in Montana; that he had anticipated returning to Coeur d'Alene before the end of November; that the delay in his return was outside of his or the company's control; that he and a helper were reopening a caved adit portal and that work progressed slower than planned.

Appellant's president also states that if the "Notice of Payment Due" had arrived before he departed for Montana, the rental would have been paid timely. He argues that the failure to pay on or before the anniversary date was not due to a lack of reasonable diligence.

30 U.S.C. § 188(c) (1970) and 43 CFR 3108.2-1(c) specify that an oil and gas lease terminated by operation of law for failure to pay the annual rental on time may be reinstated if among other things, the late payment is either justifiable or not due to a lack of reasonable diligence. "Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment." 43 CFR 3108.2-1(c)(2). Mailing the payment after it is due does not meet this requirement. Bobbie Arnold, 24 IBLA 352 (1976); L. P. Weiner, 21 IBLA 336 (1975).

Appellant's rental was due on or before December 1, 1976. The envelope containing the rental was not postmarked until December 3, 1976. Appellant failed to exercise reasonable diligence.

Appellant may have its lease reinstated if it can establish that the late payment was justifiable. Failure to pay the rental on or before the anniversary date is "justifiable" where the failure is due to factors outside the lessee's control. Louis Samuel, 8 IBLA 268, 274 (1972), appeal dismissed, Samuel v. Morton, Civ. No. CV-74-1112! EC (D.C. Calif., August 26, 1974). Appellant's president states there was an officer of the company in Coeur d'Alene during the period of his absence, but that the mail was held unopened. While he also asserts that factors outside his or the company's control prevented his timely return to Coeur d'Alene, it is apparent that one of the officers could have paid or arranged for payment to be made while the president was in Montana, or before his departure. See Maurice E. Mosher, 14 IBLA 287 (1974). His contention that he would have paid the rental prior to his departure if he had received a courtesy notice cannot serve to excuse the failure to make timely payment. Reliance upon receipt of a courtesy notice will not justify failure to pay annual rental on time. Such reliance neither prevents the lease from terminating by operation of law nor serves to justify failure of timely payment. Joseph M.

Nowacki, 23 IBLA 148 (1975). An oil and gas lessee has a duty to pay his annual rental, regardless of whether a courtesy notice is received. The courtesy notice is not a bill, but a reminder to pay. Energy Reserve, Inc., 30 IBLA 11 (1977); Charles L. Parks, 18 IBLA 404 (1975).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge

